

July 15, 1999

## **The “Great Compromise” of July 16, 1787**

### **How the Foresight of a Now-Obscure Judge Helped Create the United States Senate And Make the Constitution Possible**

Ratification of the Constitution brought the United States Senate into existence — but the Constitution itself would not have been possible without the ingenuity that first devised the Senate. The Constitutional Convention voted on July 16, 1787, to create a second house of Congress where the States would have equal representation, and it was that one crucial vote that made the Constitution possible. George Read of Delaware played an essential role in making that “Great Compromise” necessary and the outcome irresistible.

The Constitution of the United States was written in Philadelphia by 55 men drawn from twelve of the thirteen American States that had, just a few years earlier, won their independence from Great Britain. On any given day, though, only about three dozen delegates were likely to be in attendance. No more than eleven States ever voted; Rhode Island never did send delegates, and by the time New Hampshire’s delegates arrived in late July New York’s quorum had given up and gone home.

Some of those delegates to Philadelphia are giants of American history whose names will be remembered always: George Washington, James Madison, Benjamin Franklin, and Alexander Hamilton are the best examples. Some of the delegates are giants whose names are now largely forgotten: James Wilson, Gouverneur Morris, John Rutledge, John Dickinson, Robert Morris, and George Mason are some of these. And some of the delegates were prominent patriots of their time but now are mostly forgotten: George Read of Delaware is one of these.

Read was one of the colonial era’s most distinguished and influential persons, but he seems to have lacked what we might now call charisma. According to William Pierce, a Georgian who wrote “character sketches” of his fellow delegates, Read was an able lawyer but “his powers of Oratory are fatiguing and tiresome to the last degree. His voice is feeble, and his articulation so bad that few can have patience to attend to him.” Read “is about 50,” Pierce continued, “of a low stature, and a weak constitution.” We suppose that Pierce meant that Read was short and in poor health. If lacking in charisma, though, Read did not lack for integrity. He “is a good Man,” Pierce continued, “and bears an amicable character with those who know him.” 3 M. Farrand, *The Records of the Federal Convention of 1787* at 93 (rev. ed. 1937).

George Read served in the First and Second Continental Congresses and signed the Declaration of Independence. That act alone should mark him as a prominent American. Read also held many State offices, and when the President of Delaware was captured by the British, George Read was made acting President of the State. Read was a delegate to the Annapolis Convention which was a precursor to the Philadelphia Convention. After the Constitution was ratified, Judge Read was elected (by the Delaware Assembly) to the United States Senate, but he resigned after four years to become Chief Justice of Delaware.

Read was keenly aware of the risks to a small State if it should join a union with large and powerful neighbors. By acting on his foresight, he protected Delaware and the other small States and irresistibly pointed the convention toward the creation of the Senate.

The Convention began on Friday, May 25. After electing a president, the Convention read the credentials of the members, and it was "noticed" (as James Madison put it) that the credentials of the Delawareans forbade them to accept any proposal that would alter the then-current rule of the Articles of Confederation by which each State was entitled to an equal vote in Congress. 1 *Farrand* 4. That provision was the work of George Read.

Four months earlier, on January 17, 1787, George Read had written to the eminent John Dickinson (who had been President of both Delaware and Pennsylvania) to urge that the State of Delaware forbid its delegates to agree to any change in the rule providing each State with an equal vote. Read's letter said:

"Dear Sir, — Finding that Virginia hath again taken the lead in the proposed convention at Philadelphia in May, . . . it occurred to me, as a prudent measure on the part of our State, that its Legislature should, in the act of appointment, so far restrain the powers of the commissioners . . . as that they may not extend to any alteration in that part of the fifth article of the present Confederation, which gives each State *one vote* in determining questions in Congress . . . -- that is, that such clause shall be preserved or inserted . . . in any revision that shall be made and agreed to in the proposed convention. I conceive our existence as a State will depend upon our preserving such rights. . . . [S]uch is my jealousy of most of the larger States, that I would trust nothing to their candor, generosity, or ideas of public justice in behalf of this State. . . . Persuaded I am, from what I have seen occasionally in the public prints and heard in private conversations, that the voice of the States will be one of the subjects of revision, and in a meeting where there will be so great an interested majority, I suspect the argument or oratory of the smaller State commissioners will avail little. In such circumstances I conceive it will relieve the commissioners of the State from disagreeable argumentation, as well as prevent the downfall of the State, which would at once become a cypher in the union. . . . [T]herefore, clear I am that every guard that can be devised for this State's protection against future encroachment should be preserved or made." 3 *Farrand* 575-76 n. 6.

Read's farsighted suggestion then found its way into the official credentials of the Delaware delegation which were carried into Philadelphia, which said:

"Be it therefore enacted by the General Assembly of Delaware, that George Read, Gunning Bedford, John Dickinson, Richard Bassett and Jacob Broom, Esquires, are hereby appointed Deputies from this State to meet in the Convention of the Deputies of other States, to be held at the City of Philadelphia . . . to join with them in devising, deliberating on, and discussing, such Alterations and further Provisions as may be necessary to render the Federal Constitution adequate to the Exigencies of the Union; . . . *So always and Provided, that such Alterations or further Provisions, or any of them, do not extend to that part of the Fifth Article of the Confederation of the said States . . . which declares that 'In determining Questions in the United States in Congress Assembled each State shall have one Vote.'*" 3 *Farrand* 574-75 (emphasis added).

The restriction that Delaware had placed on its delegates made an impression on everyone. Two days after the credentials were presented, George Mason wrote to his son expressing his dismay that Delaware had "tied up the hands of her deputies." 3 *Farrand* 28. Six months later (which was ten weeks after the Convention had adjourned *sine die*), Delaware's decision was still on the mind of Maryland's Luther Martin when he reported to the Maryland Assembly. 3 *Farrand* 173. Martin's report is particularly noteworthy because he had not yet arrived in Philadelphia when Delaware's credentials were read; he arrived two weeks later. *Id.*

During that hot summer in Philadelphia, the delegates wrestled with numerous questions, but the most difficult and contentious was the question of representation: How were these fiercely independent States to be represented in a federal union? Delaware, to cite one small and steadfast example, was not going to join a union in which New York or Pennsylvania or Virginia, to cite three large and threatening counterexamples, would have six or eight or ten times as many votes as Delaware. Virginia and the other large States, on the other hand, failed to understand what principle of justice or equity (or politics) would permit Delaware to claim a representation that was equal to its far more populous and wealthy neighbors. The conundrum was resolved by the creation of an ingenious institution — the United States Senate.

The "Virginia Plan," which formed the basis for the convention's deliberations, provided for a national legislature of two branches, the first to be elected by the people and the second to be elected by the first. Under that plan, the States would be represented according to population or property and not equally, as they then were under the Articles of Confederation. The small States were resolutely opposed to the idea of proportional representation: They were not going to be swallowed-up (or pushed around) by their larger and more populous neighbors.

On May 30, George Read moved that debate be postponed on Virginia's plan for proportional representation because "the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage." 1 *Farrand* 37. Mr. Read was,

of course, quoting himself. If the convention were to agree to any such change, Read continued, the delegates from Delaware might be duty bound "to retire from the Convention." *Id.*

Debate on representation could not be put off forever, though, and on June 29, by a vote of 6-to-4, with one State divided, the Convention agreed that representation in the first house of the legislature would *not* be according to the rule of the Articles of Confederation "but according to some equitable ratio." 1 *Farrand* 460. Oliver Ellsworth of Connecticut then moved that, in the second house, each State should be represented equally. "I confess," he said, "that the effect of this motion is to make the general government partly federal and partly national, but this will secure tranquility, and still make it efficient. . . ." 1 *Farrand* 474.

On Monday morning, July 2, the crucial question was put to the Convention, shall each State have an equal vote in the second house? The question failed on a tie vote. The Convention was at a standstill. In an effort to break the impasse, one member from each State was appointed to a committee, and the convention then adjourned until the 5th. The future of America hung by a thread.

Back in Convention on the 5th, Elbridge Gerry of Massachusetts presented the committee's report which was based on a suggestion from the ever sagacious Franklin. It proposed that the first branch of the legislature should have one representative for every 40,000 inhabitants and the power to originate all bills for raising or appropriating money, and that the second branch should provide each State with an equal vote. Large-state delegates promptly criticized the report, and the debate raged for ten days more.

On the morning of July 16, the Convention took the key vote. By the narrowest possible margin the Convention agreed to equal representation in the second branch: Connecticut, New Jersey, Delaware, Maryland, and North Carolina voted for equal representation; Pennsylvania, Virginia, South Carolina, and Georgia voted against it. Massachusetts, a large State that often voted with Pennsylvania and Virginia, was divided. New York no longer had a quorum and did not vote. New Hampshire would not arrive for another week.

This was the Great Compromise of the Convention, and it was the birth of the United States Senate. Many delegates made it possible, and George Read himself did not play a prominent role on the floor of the Convention. However, Read's far-seeing preliminary work which led to Delaware's binding instructions to its delegates gave the Delawareans and delegates from all the small States a rock to stand on and defend. That rock was equality of representation for the States, and the Delawareans were forbidden to surrender that ground.

George Read's experience and foresight helped create the United States Senate, and the creation of the United States Senate made the Constitution possible.

Staff Contact: Lincoln Oliphant, 224-2946